

IN THE
Supreme Court of the United States
October Term, 1978

No. **78 - 809**

VENOLA WALTON,

Appellant,

-v.

SMALL BUSINESS ADMINISTRATSION,

Appellee.

*On Appeal from the United States Court of Appeals
for the Second Circuit*

JURISDICTIONAL STATEMENT

VENOLA WALTON
Plaintiff-Appellant pro se
539 West 148th Street
New York, N.Y. 10031

TABLE OF CONTENTS

	<i>Page</i>
Jurisdictional Statement	1
Opinions Below	2
Jurisdiction	2
Statutes Involved	3
Federal Tort Claims Act	3
Procedure	4
The Federal Civil Rights Act (42 USC 1985) Chapter 7	4
Question Presented	6
Statement of the Questions	6
Statement of the Case	9
The Questions Are Substantial	10
Conclusion	15
APPENDICES:	
1—Complaint Filed With SBA In Washington And SBA Findings	1a
2—Memorandum Decision of District Court	22a
3—United States District Court Judg- ment dated January 23, 1978	25a

4—Order of United States Court of Appeals Second Circuit, Dated June 19, 1978	26a
5—Order dated August 9, 1978 Denying Petition for Rehearing	27a
6—Letter from Belle Maid Dress Corp. dated July 12, 1965 Assuring SBA Of Plaintiff's Ability and Competence and That They Would Provide Work	28a
7—Contract from Anne Fogarty	29a
7-A—Letter from M.J. Fenton (Landlord) Dated October 20, 1965 to SBA (NYC) Extending Time to Process Loan	31a
8—False Statements Placed in Plaintiff's SBA's Files .	32a
9—Checks Reflecting Payment to SBA on Loan Note from Dec. 7, 1964 through Sept., 1965	34a
10—Reference Letters Establishing Plaintiff's Qualifications, and Business References	43a
11—Suit Filed by Plaintiff on July 20, 1976 In United States District Court for the Southern District of New York	45a
12—Plaintiff's One Year Projection of Income and Expenses	48a
13—Notice of Appeal	50a

AUTHORITIES CITED:

Federal Civil Rights Act (42 USC 1985) Chapter 7	4
Federal Tort Claims Act Title 4, Sec. 403(b)	5
Moore's Federal Practice Vol. 6, Part 2, Rule 56-26, An Act of (CA3d Congress 1974) 490 F2d 1360-1371 n6	5
Federal Rules of Civil Procedure, Title 28 U.S.C.A. Rule 38(a)	5
U.S. Code Annotated, Title 28, Federal Rules of Civil Procedure, Rule 15(a), (b), (c)	5
USC-701, Title 5, Application; Definitions	5
USC Annotated, Title 15, 634, Administrative powers ..	5
U.S. Code Annotated, Title 28, Judiciary—Judicial Procedure 2281-2500, Sec. 2403 p. 389	5
28 USC 1252	5
Supreme Court Practice, Third Edition, Sect. 2-5	5

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JURISDICTIONAL STATEMENT

Venola Walton, plaintiff-appellant, appeals from the order of the United States Court of Appeals, Second Circuit, entered June 19, 1978. The order, judgment was affirmed on the opinion of the United States District Court, Southern District of New York (entered on January 23, 1978, pursuant to its memorandum decision). Thereafter, a petition for a rehearing was timely filed in the United States Court of Appeals, Second Circuit, which petition was denied and order entered thereon August 29, 1978, and I submit this jurisdictional statement to show that the Supreme Court of the United States has jurisdiction over this appeal, and that a substantial question is presented.

Opinions Below

The findings of the United States Government Small Business Administration, Washington, D. C. 20416, dated October 7, 1975. It was pursuant to a complaint, Venola Walton, filed with the Small Business Administrator, Mr. Thomas S. Kleppe, on August 11, 1975, and is reported in the appendix hereto at 1a-21a.

The opinion of the United States District Court, Southern District of New York, memorandum decision and order judgment, is reported in the appendix hereto at 22a-25a.

The opinion of the United States Court of Appeals for the Second Circuit, judgment affirmed on the opinion of the U. S. District Court, Southern District of New York, is reported in the appendix hereto at 26a.

The opinion of the United States Court of Appeals, Second Circuit, a petition for rehearing is reported in the appendix hereto at 27a.

JURISDICTION

This suit is a civil action by the plaintiff-appellant brought under the Federal Tort Claims Act, Title 4, Sec. 410-411, Federal Civil Rights Act, Chapter 7 (42 U.S.C. 1985); Supreme Court Practice, Sec. 2-5(1), to set aside an order, judgment of the United States District Court dismissing my case, entered January 23, 1978, and was upheld by the United States Court of Appeals, entered August 29, 1978. A notice of appeal was filed in that court on September 25, 1978. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28 United States Code 1252.

Statutes Involved

This case involves the first part of the 14th Amendment of the Constitution of the United States, which provides as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also involves the Federal Civil Rights Act.

The Federal Tort Claims Act, Title 4, short title, F.T.C.A., page 843:

Federal Tort Claims Act.

Part 3—Suits on Tort Claims against the United States

"Sec. 410—(a) Subject to the provisions of this title, the United States District Court wherein the plaintiff is resident, or wherein the act or omission complained of occurred, including the United States district courts for the territories and possessions of the U.S., sitting with or without a jury, shall have exclusive jurisdiction to hear, determine and render judgment on any claim against the United States, for money only occurring on and after January 1, 1945, on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of any

employee of the government while acting in the scope of his office, under circumstances where the U.S. if a private person would be liable to the claimant for such damages, . . . Subject to the provisions of this title, the United States shall be liable in respect of such claims as a private individual under like circumstances, except that the United States shall not be liable for interest prior to judgment."

Procedure

Sec. 411—In actions under this part, the forms of process, writs, pleadings and motions and the practice and procedure, shall be in accordance with the Rules promulgated by the Supreme Court pursuant to the Act of June 19, 1934 (48 Statute 1064) and the same provision for counterclaim and set-off for interest upon judgment.

The Federal Civil Rights Act (42 USC 1985) Chapter 7

The purpose of this statute was to give a cause of action to individuals deprived of their federal rights by conspiracies of either public officials or private persons.

95(3) — It gives to every citizen involved in litigation the right to be free from a conspiracy

"for the purpose of impeding, hindering, obstructing, or defeating in any manner the due course of justice in any State or Territory, with intent to deny to any citizen equal protection of the laws, or to injure him or his property, for lawful enforcing or attempting to enforce, . . . of any persons, or class of persons, to the equal protection of the laws."

(9815-97)(3) "Equality," — the right to be free from a denial of equal protection in employment and business opportunities is protectable under this subsection. To illustrate: "An action was held to lie when city officials intentionally discriminated against a Negro liquor license holder and revoked his license."

The Circuit Court of Appeals has also held that an architect stated a cause of action under this subsection when he alleged a conspiracy of city officials subjecting him to unlawful discrimination in regularly and deliberately denying his application.

The Court of Appeals ruled there was no cause of action when the defendant in a civil suit had allegedly misappropriated exhibits, introduced perjured testimony and made untrue and slanderous statements about the plaintiff.

1. Federal Tort Claims Act Title 4, Sec. 403(b).
2. Moore's Federal Practice Vol. 6, Part 2, Rule 56-26, An Act of (CA3d Congress 1974) 490 F2d 1360-1371 n6.
3. Federal Rules of Civil Procedure, Title 28 U.S.C.A. Rule 38(a).
4. U.S. Code Annotated, Title 28, Federal Rules of Civil Procedure, Rule 15(a), (b), (c).
5. USC-701, Title 5, Application; Definitions.
6. USC Annotated, Title 15, 634, Administrative powers.
7. U.S. Code Annotated, Title 28, Judiciary—Judicial Procedure 2281-2500, Sec. 2403 p. 389.
8. 28 USC 1252.
9. Supreme Court Practice, Third Edition, Sect. 2-5.

Question Presented

Whether the Small Business Administration intentionally discriminated against me, denied me an economic opportunity loan, engaged in a conspiracy and fraud, closed my business, prevented me from economic growth, and whether, where this was a Black owned business, and had met all of the Small Business Administration requirements and standards, was purposely denied all of the opportunities and advantages and protection provided for, by, the laws, to improve and expand my business. And where this case involves important Federal and Constitutional questions, and genuine issues of material fact, was subject to summary dismissal, and whether the District Court lack subject matter jurisdiction over this claim, and whether the Administrator exercised his authority in the interest of my business after having knowledge of agency actions.

Statement of the Questions

Plaintiff is appealing this case on the original complaint and record filed in the District Court on July 20, 1976. See Plaintiff's affidavit in opposition to defendant's motion to dismiss her case filed June 15, 1977 and plaintiff's brief and joint appendix filed in the United States Court of Appeals on April 21, 1978 and Petition for Rehearing filed June 30, 1978, which will show that Plaintiff presented substantial argument and evidence to sustain her position. The District Court's Memorandum Decision has not presented one piece of evidence to sustain its decision.

Plaintiff-appellant, a Black woman who had an established dress factory in the garment district at 347 West 39th Street, employing 20 people, applied for an Economic Opportunity loan for \$25,000.00. The Small

Business Administration granted me a \$6,000.00 loan in November, 1964. Business showed growth and a need for expansion and improvement in my business operation. In June, 1965 I applied for an Economic Opportunity Loan.

I spoke to Mr. Gordon, an S.B.A. officer, who was assigned to visit my shop and aid me with problems, who advised that I have my jobber write a letter to the S.B.A. to assure them that I would have sufficient income to repay the loan. The letter was sent, the application was completed. I am waiting for them to make the loan.

After waiting so long I called the SBA's office to check, and speed them up. Nothing had been done. My application was just lying there. They told me I had to get another contract. I questioned them, "Why should I get another contract when I have a jobber who has committed himself to the Small Business Administration to supply me with continuous work, to the capacity of my shop."

He said, "Well you will have to get another jobber." I then secured another contract from Anne Fogarty at 550 7th Avenue. App. 29a-30a.

When they were ready to send the work into my shop I was behind in my rent at that point. The Small Business Administration said we can't let you take the work, because the landlord will lock you out, and the company would not be able to get the work to fill their orders. The SBA had me get a letter from my landlord to grant me time for them to process my application and for me to work. My landlord granted me generous time, but the SBA still would not let the work come into my shop. Landlord's letter App. at 31a.

The Internal Revenue Service called and told me they were coming to put a seal on the door that same day, which they did.

I was unaware that the Small Business Administration was not acting in good faith up to this point. When they had demanded that I get a new contract and when the work was ready, they would not let me take the work, and

when my landlord granted me over two months for me to work, and for them to process the loan, and then they wouldn't let the work come into my shop, and neither did they process the loan.

Instead, the Internal Revenue Service was called to put a seal on my door.

Then I knew it was the Small Business Administration that caused all of my so-called problems, they created them and aggravated them. They invaded the privacy of my business under false pretense as to aid me with problems while all the time they were engaged in a conspiracy and fraud to close my business. The SBA granted me the token loan of \$6,000.00 and just three months later the SBA had placed false information in my file — a delinquent notice to set up my SBA file to make sure I wouldn't get any financial assistance from them or any other source. 32a.

However, I didn't know that false document and others were in my file until I filed a complaint with the SBA, Administrator Mr. Kleppe in Washington, D.C., Department of Discrimination. They investigated, and sent me their findings. I informed them that their findings had many false statements and had omitted many facts that needed to be brought out for justice to be done and I requested a hearing or appointment to present the same.

The SBA requested that I send them what facts I alleged as false and what proof I had. Several letters were transmitted between us. They were requesting that I send, and I was requesting an appointment for a hearing to submit my proof in person.

I refused to send my proof until I was allowed to review my file in the SBA's New York office. I reviewed certain documents in my file and was given copies of them. Then, I prepared the requested information for the SBA in Washington, and sent it to them.

Thereafter, they closed my case and would not

reopen it. I had no other recourse, but to file a suit in the Federal District Court.

My rights were abused in the District Court. I demanded a trial by jury as provided for under Rule 38. My request was completely ignored. The Court put me through undue stress and strain, trying to present my case on paper and put me to a disadvantage, a pro se having to try and deal with a maximum of laws and statutes under which this case was being conducted.

The Court allowed the illegal filing of motions and the issuing of orders and unlawfully brought my case under the statute of limitations and dismissed it.

I appealed to the United States Court of Appeals, and they upheld the District Court's decision.

STATEMENT OF THE CASE

The Small Business Administration intentionally discriminated against me, engaged in conspiracy and fraud to prevent a black woman from operating a successful business, participating in the economic growth of our country. The defendant's actions raise questions for review.

1. Why did the Small Business Administration demand that I get another jobber, when I had a jobber supplying me with work to the capacity of my shop?

2. Why did they hold my application for six months and not process the loan?

3. Why, after demanding that I get another jobber, when the work was ready to come into my shop, the Small Business Administration would not let the work come into my shop?

4. Why, when my landlord wrote the SBA a letter, granting me generous time, for me to take the work in, and for the SBA to process the loan, they still did not allow the work to come into my shop? Nor process the loan.

5. There had not been any delinquents in the payments of my loan notes to SBA; why did the defendants, Small Business Administration, place a delinquent notice in my SBA file just three months after they had granted me the \$6,000. loan?

6. And why did that notice remain in my SBA file for 10 years?

7. And, why was it used by the Administrative office, given as a reason why my 1965 loan had been denied?

This action involves important Constitutional and public questions and requires the jurisdiction of this Court.

Whether the District Court lacked subject matter jurisdiction over claims.

Whether the Small Business Administration should have been granted leave to amend its answer and counterclaim to assert the statute of limitations as an affirmative defense, seven months after the first filing and shortly after moving to dismiss, and whether this case was subject to summary dismissal.

Whether the administrative office exercised its authoritative powers in the interest of my business, and whether I was given equal protection and opportunity as provided under the Economic Opportunity Act of 1964. The Small Business Administration purposely denied me the opportunities and advantages that were available for minority, or just small businesses, during that period.

THE QUESTIONS ARE SUBSTANTIAL

The questions are so substantial because the plaintiff-appellant had an established business, employing 20 people. I had collateral, machines, equipment, supplies, etc. and "I was a black" woman, a minority, who was denied an economic opportunity loan to expand and improve my business in 1965. In spite of the 1964

Economic Opportunity Act, that had as one of its primary goals the preservation of free competitive enterprises in order to strengthen the nation's economy, the Small Business Administration held my application for a loan 6 months, and never processed it. And during the course of that time, the SBA tortiously interfered with my business; they demanded I get a new contract in 1965, and after obtaining the contract, they would not allow the work to come into my shop. 29a-30a.

Their interference had caused me not to be able to meet my obligations; I owed rent. However, my landlord granted me generous time for the Small Business Administration to process the loan and for me to take the work in. But the SBA still would not allow the work to come into my shop. 29a-30a

The question is so substantial because my federal and Constitutional rights have been violated. I was denied the right to operate my business; I was denied the right to equal opportunities and protection provided for by the laws.

The 14th Amendment to the Constitution of the United States provides for these rights and privileges, and they shall not be abridged.

The question is substantial because I am a productive citizen. I was producing, I was contributing to the economic growth of our country. I was giving jobs to people and had a job for myself.

I was unlawfully cut off, denied the right to participate in our free enterprise system, because my skin is black.

I filed a complaint with the Small Business Administrator, Mr. Thomas S. Kleppe on August 11, 1975. They investigated, and sent me their findings.

I informed them that their findings had many false statements and had omitted many facts that needed to be brought out for justice to be done. They, then, requested

that I send them what facts I alleged as false and what proof I had of such. I refused to send them my proof. I requested a hearing to present it in person. The Administrator's office ignored my request, after several letters were transmitted between us.

I then went to the Civil Liberty Union. I told them what had transpired theretofore, and told them I would not send them any proof unless I am able to go into the Small Business Administration office and review my file. It was through their office that an appointment was made for me to review my file.

I went into the SBA's office and reviewed that information and was given copies of it. Washington's SBA office closed my case after an appointment was made for me to review my file. I prepared the information the SBA in Washington had requested and mailed it to them and requested that they reopen my case.

They refused to reopen my case, stating that they found no wrongdoings by the SBA in New York. The question is substantial because this was the information the SBA in Washington had sent me in their findings, and gave as the reason my loan was denied in 1965. Complaint, and letters are printed herein as Appendix 1, pages 1a-21a (SBA Washington's findings).

I had no other recourse but to file suit in the Federal District Court.

The questions are so substantial because when I filed this case in the District Court, I demanded a trial by jury as provided for in Title 28 U.S.C.A. Rule 38. *The court denied my request, and further, granted the defendant's motion for leave to amend its answer and counterclaim to assert the Statute of Limitations as an affirmative defense, seven months after his first answer.*

Rule 56 holds in every instance that the record must be factually adequate, that there is no genuine issues of material fact, for the granting of summary judgment. Rule

56-(58)—. The Statute—a defending party may move for summary judgment on the basis of the statute of limitations. There is authority that if the defendant first files an answer and fails to plead the statute of limitations, and then later moves for summary judgment on the basis of limitation, his motion must be denied on the theory that he has waived the defense and cannot therefore avail himself of it unless relieved by appropriate actions.

Summary judgment should have been denied. Rule 56, page 738, states while a defendant would be entitled to summary judgment on the basis of one good affirmative defense that does not involve a triable issue of fact, summary judgment must be denied where there is a triable issue of fact in connection with each affirmative defense upon which the defendant's motion is predicated.

The defendant-appellee showed prejudice and contempt when he states: "In this case, Plaintiff, Venola Walton, a black woman, charges that the Small Business Administration, has denied her the opportunity to make a living since 1965 and seeks \$500,000 in compensatory damages for each year of this alleged deprivation, or approximately \$6 million."

The plaintiff, Venola Walton, takes no pleasure in having to sue the Small Business Administration for its injustice to me and its discriminatory practices that led to this action.

I would much rather have been respected and treated as a full citizen of these United States and given the opportunity to work for it, to have been allowed to remain a part of our free enterprise system; to participate in the strength of our country's economy. The Small Business Administration denied me these opportunities, when they intentionally and wrongfully discriminated against me, and used fraud to preclude my business.

15 U.S.C. 701-37 the statute precluding review generally.

Judicial review will not be cut off unless clear and convincing evidence discloses that Congress has both considered and prohibited judicial review of agency action in question.

A statute must demonstrate clear and convincing evidence of an intent to preclude review before courts will cut off an aggrieved party's right to be heard. Withdrawal statutes come into play when there has been a clear departure from statutory authority, and expose the offending agency to review of administrative action otherwise made reviewable by statute.

The defendant was advised to use several laws, rules, and statutes to prevent my case from being heard, and, if heard, the court would be precluded from granting injunctive relief. The SBA is engaged in a conspiracy to wrongfully and unjustly dismiss my case.

It is my federal and constitutional right to a trial by jury. I have a right to be heard.

CONCLUSION

Plaintiff should be awarded the damages requested in her complaint, in that she was discriminated against and suffered severe, business economic and social injuries and injustices were imposed upon her as a black woman, and false information was placed in her SBA file preventing her from enjoying the full economic benefits to which the law provides.

Also, defendant was wrongfully allowed to amend his answer to assert the Statute of Limitations, barring any part of plaintiff's claim in 1965 on.

Therefore, plaintiff is asking this Court to order the Small Business Administration to pay her \$500,000 for each year she has been:

1. Denied the opportunity to earn a living;
2. Denied the opportunity to participate in our economic struggle, by making jobs for others;
3. Denied the opportunity to participate in our free enterprise system;
4. To pay for the obstruction of my livelihood.

Dated: November 15, 1978

Respectfully submitted,

Venola Walton,
Plaintiff-Appellant Pro Se

APPENDIX 1**COMPLAINT FILED WITH SBA IN WASHINGTON
AND SBA FINDINGS**

Mr. Thomas S. Kleppe
Administrator
Small Business Administration
1441 L Street, N.W.
Washington, D.C. 20416

Dear Mr. Kleppe,

I wish to file a complaint against one of your agencies, the Small Business Administration. I was discriminated against, and denied an Economic Opportunity Loan, which I thoroughly qualified for.

The S.B.A. conspired to put me out of business and keep me out of business because: 1—I am black, 2—I am a female, 3—The type of business.

I originally applied for this loan in June, 1965. At that time I had a going business and was employing 17 persons, and had a job for myself.

I had been granted a token loan for \$6,000.00 in November, 1964, and my payments were kept up to date. Mr. Gordon, an S.B.A. officer, was assigned to visit my shop, and aid me with problems. When I applied for the loan, he requested that I have my jobber write a letter to assure the S.B.A. I would have sufficient income to repay the loan. That latter is attached for your viewing.

I enquired about the loan after waiting so long. My application was just lying there. I was then told to get another contract. I secured a contract from Anne Fogarty, 550 Seventh Avenue. When they were ready to send the work into my shop, the S.B.A. wouldn't let me take the work.

I was behind in my rent at that point. The S.B.A. said, we can't let you take the work, because the landlord will lock you out, and the Company wouldn't be able to get the work to fill their orders. Then I had my landlord write to the S.B.A., granting me time before they take any action, but they still did not let the work come into the shop. The Internal Revenue called and told me they were coming to put a seal on the door that same day, which they did. Attached is a letter from the landlord, and the contract from Anne Fogarty.

Many efforts have been made in-between 1965 and 1975, to obtain a loan to reopen my business. I have tried to get a loan, or (that loan) as recent as April 8th, 1975, but with no success. They returned my application and supporting documents. I am enclosing my letter dated April 8th, 1975, which accompanied my application to them, also their letter of denial dated 6/2/75.

I have never tried to forfeit my loan obligations. It has always been acknowledged by me first. I am enclosing a copy of a letter I mailed to five Government heads, including the President, (Johnson at that time), and Folley of S.B.A., in Washington, D.C.

In that letter of December 1, 1965, I was reaching out for help. I didn't feel that it was necessary to cry out discrimination, or that I was being denied the opportunity to earn a living, after that law went into effect to help minorities in business in 1964. I felt sure that out of the five letters I mailed, at least one of them would have interceeded, and had the seal removed from the door, and look into my problem. Instead, nothing was done to help.

I hope I have given enough facts, and outlined what happened properly, so as to give a clear picture of the total complaint.

Very truly yours,

Venola Walton

Miss Venola Walton
539 West 148th Street, Apt. 6
New York, New York 10031

Dear Miss Walton:

This is in reply to your letter of August 11, 1975, alleging sexual and racial discrimination against you by the Small Business Administration (SBA).

We have reviewed the loan files from our New York District Office regarding Emy Grant Fashions, 479 West 150th Street, New York, New York. The following facts were found:

A direct loan in the amount of \$6,000 was authorized on October 30, 1964, by SBA to Emy Grant Fashions per your application dated September 11, 1964. (RSL-134,860-NY(P)). On March 1, 1965, the New York District Office requested by letter that you provide them with an annual periodic financial statement, in accordance with the provisions of the loan agreement. Mr. Melvin Walker, at that time, the Acting Supervisory Loan Specialist, notified you on May 13, 1965, that you were in violation of your loan agreement because you had not sent his office the requested annual financial statements. On May 24, 1965, you responded by sending the financial statement for Emy Grant Fashions for the 6 months ended December 31, 1964. This financial statement showed a loss for that 6 month period totaling \$1,489.07. Your letter dated May 24, 1965, which accompanied

your annual financial statement revealed to SBA for the first time that you had changed the name of your company to Emily Grant Fashions, Inc., Manufacturers of Dresses. Also, it revealed that you had without prior notice to SBA, transferred all of the assets and liabilities of Emy Grant Fashions to Emily Grant Fashions, Inc., the stock of which was issued to you.

The loan files indicate that SBA sent you your first delinquent notice on April 2, 1965. At that time, you were 1 month in arrears. A June 29, 1965, Report on Field Visit Made (Field visit of 6-16-65) written by Loan Specialist, Stephen Gordon, indicates that after an examination of your company's bank books there appeared to be a shortage of funds. At that time, your loan was shown as current. On that same occasion, Mr. Gordon discussed with you the SCORE Program and you signed SBA Form 641, requesting counseling from SCORE. A Volunteer Advisor Program Evaluation Report about Emy Grant Fashions written by SCORE Counselor, Mr. Morris Shenker, indicated that based on his observations of your business you were in difficulty and that union manufacturers had cancelled contracts with you because your shop was nonunion.

A copy of your December 1, 1965, letter to Mr. Eugene P. Foley, then the Administrator of the Small Business Administration, is included as part of the loan file. You stated in paragraph four of that letter, and I quote "I succeeded in getting a jobber who was able to supply me with a steady flow of work. I worked for them a few months successfully. Then the union started harassing the shop. It was a constant thing, exerting more pressure from time to time, until the work was stopped completely. I called on various government departments and organizations for help,

but they were unable to do anything to help my situation. Consequently, I became delinquent in my taxes."

Miss Walton, your own words written to SBA seem to refute your allegation that SBA conspired to put you out of business.

A memorandum reporting delinquent loans, dated February 21, 1966, (for the monthly period ended February 25, 1966) to Acting Regional Director, Mr. Andrew J. Semon from Mr. Stephen Gordon, Loan Specialist showed your loan to be delinquent by \$198.00 (two installments). In the comments section of this report Mr. Gordon stated that your business had been seized by the Internal Revenue Service on December 14, 1965, for nonpayment of taxes. He informed Mr. Semon that your loan would be transferred to liquidation.

On March 17, 1966, a second memorandum reporting delinquent loans (for the monthly period ending 2-25-66) to the Acting Regional Director showed your loan to be further delinquent five installments, in the amount of \$495.00.

A May 12, 1966, report to the Regional Director for Mr. Stephen Gordon, Loan Specialist shows your business was inactive and your loan delinquent 6 monthly installments in the amount of \$99.00 each, for a total of \$594.00 as of April 13, 1966. The report indicates that several attempts were made to contact you by phone in efforts to effect collection. Mr. Gordon states that because of additional duties he was unable to make personal visits to effect collection. In view of the foregoing, Mr. Gordon recommended the following:

1. That the Regional Director authorize acceleration of maturity of your note.
2. That the Regional Director make written de-

mand upon you for payment of your loan. In the event that you did not comply with the demand for payment, the Regional Counsel was to refer your loan to the United States Attorney for a deficiency judgment.

On June 7, 1966, Acting Regional Director, Raymond B. Curran sent to you (by certified mail, return receipt requested) a letter informing you of your default on your loan. He informed you of your failure to pay certain installments of principal and interest when they became due and payable, and of their intent to accelerate the maturity of the note. Finally, Mr. Curran advised you that unless your note was paid including the balance of principal and interest accrued to date of payment, no later than June 13, 1966, SBA would "proceed to take such action as is available to us for the purpose of enforcing payment of this loan without further notice to you."

Miss Walton, your loan was charged off, subject to semi-annual review on July 27, 1966. The principal balance was \$5,210.42. The accrued interest was \$34.23, a total of 5,244.65.

On November 5, 1968, Mr. Irving Warnasch, Program Coordinator Liquidation and Disposal, sent a letter to you (certified mail return receipt requested) demanding payment of the balance due on your loan by November 20, 1968, unless SBA proceed against you. No response to this letter by you is included in the loan files.

A final memo to the files dated October 15, 1969, states that you visited the New York District Office and were interviewed by the Liquidation and Disposal Officer, Mr. Edward J. Ryan.

At your insistence (the report states) you were given a written statement signed by Mr. Ryan to the effect that your loan had been Charged-off, Closed, on November 6, 1968, with an outstanding balance of \$5,244.65.

The law requires reasonable assurance that an SBA loan can be repaid out of the proceeds of the business. The history of your former dealings with SBA do not appear to support such repayment ability.

Based on the above facts, and after reviewing the circumstances involved with your loan, we find no evidence of discriminatory treatment. It appears that the New York District Office personnel made every effort to be of assistance to you.

Sincerely,

s/Robert L. Maxwell
Robert L. Maxwell
Assistance to the Chief
Compliance Division
Office of Equal Employment
Opportunity and Compliance

Ms. Venola Walton
539 West 148th Street
Apartment 6
New York, N.Y. 10031

Dear Ms. Walton:

This is in reply to your letter dated October 15, 1975, to former Administrator Thomas S. Kleppe reiterating that you were discriminated against by the New York District Office of the Small Business Administration.

Mr. Robert Maxwell sent you a letter on October 10, 1975, which contained his preliminary findings. You allege that he omitted many important facts. We reiterate what he asked you for before, to provide us with any specific facts regarding the alleged acts of discrimination by SBA or SBA employees including who, where, when, how, why and what specific acts you feel are important which constitute discrimination. SBA has no authority over other government agencies or non-public organizations or individuals. You also indicate in your most recent letter that many of Mr. Maxwell's preliminary findings are not true. Please indicate which statements you believe not to be true and what facts you have which would tend to refute them.

You can be assured that if you provide us with additional specifics, we will conduct an in-depth investigation of your complaint. We appreciate your bringing these allegations to our attention. We would deeply appreciate your cooperation in finding out what the facts actually are

and providing us with specific information previously requested and which we are again requesting from you.

Thank you for your attention.

Sincerely yours,

s/J. Arnold Feldman

J. Arnold Feldman

Chief, Compliance Division

Office of Equal Employment
Opportunity and Compliance

10a

539 West 148th Street, Apt. 6
New York, N.Y. 10031

November 11th, 1975

Mr. J. Arnold Feldman
Small Business Administration
Chief, Compliance Division
Office of Equal Employment,
Opportunity and Compliance
1441 L. Street, N.W.
Washington, D.C. 20416

Dear Mr. Feldman,

This is in reply to your letter dated October 30, 1975, of which was a reply to a letter I wrote to Mr. Kleppe regarding a complaint I filed against the Small Business Administration the findings thereof.

It is true that Mr. Maxwell omitted many important facts, and made many false statements in his report. I had no correspondence with Mr. Maxwell until I received his report dated October 7th, 1975. I did receive a telephone call on September 30th, 1975. In my letter to Mr. Kleppe, dated October 15th, 1975, I requested a hearing that all the facts may be presented. Mr. Maxwell stated in his report that he had received my files from the New York Office, and these things were found in my file.

In my complaint I attached certain documents, and the dates thereon will verify my complaint against the S.B.A. I was already in business and employing 17 persons, and had a job for myself at the time I applied for the loan.

I would appreciate a hearing on this matter, or an appointment to present proof to you, or to the person in charge of Mr. Kleppe's office.

11a

Thanking you for your immediate attention to this matter.

Very truly yours,

Venola Walton

Ms. Venola Walton
539 West 148th Street
Apartment 6
New York, New York 10031

Dear Ms. Walton:

This is in reply to your letter dated November 11, 1975, to Mr. J. Arnold Feldman, Chief, Compliance Division, Office of Equal Employment Opportunity and Compliance, reiterating that our investigation of your complaint contained many false statements and omitted many important facts.

You have again failed to supply us with any additional information which would be more illuminating. We reiterate what we asked you for before, to provide us with any specific facts regarding the alleged acts of discrimination by the Small Business Administration or its employees including who, where, when, how, why and what specific acts you feel are important which constitute discrimination.

Again, we ask you to please indicate which statements, in the investigation report you believe not to be true and what facts you have which would tend to refute them.

In regards to your statement concerning the documents you mailed to us, attached to your letter of complaint as verification of your being discriminated against by SBA, none of them serve to substantiate your allegations.

You can be assured that if you provide us with additional specifics, we will conduct an in-depth investigation

of your complaint. We appreciate your bringing these allegations to our attention. We would deeply appreciate your cooperation in finding out what the facts actually are and providing us with specific information previously requested and which we are again requesting from you.

Thank you for your attention.

Sincerely,

s/Robert L. Maxwell
Robert L. Maxwell
Assistant to the Chief
Compliance Division
Office of Equal Employment
Opportunity and Compliance

14a

539 W. 148th St.
Apt. 6
New York, N.Y. 10031

Dec. 5, 1975

Mr. Robert L. Maxwell
Assistant to the Chief
Compliance Division
Office of Equal Employment
Opportunity & Compliance
1441 L. St., N.W.
Washington, D.C. 20416

Dear Mr. Maxwell:

I am writing in reference to your letter dated November 19, 1975. You mailed me a report of your findings on October 7, 1975. I am sure your report was based on my complaint, attached documents and my files from your New York office. With that being true, and if the information in my files was correct, those statements could not or would not have been made. I have in my last two letters to your office requested a hearing so that the facts could be presented. My requests have been ignored. Therefore, I have been advised to seek legal counsel who will present the facts at the proper time.

I had hoped your office would have been more helpful in this matter.

Very truly yours,

s/Venola Walton
Venola Walton

Ms. Venola Walton
539 West 148th Street, Apt. No. 6
New York, New York 10031

Dear Ms. Walton:

This is in reply to your letter dated December 5, 1975, regarding the preliminary findings of no discrimination in your complaint against the New York District Office of the Small Business Administration.

In letters dated October 30, 1975, and November 19, 1975, we asked you to provide us with specific information which might give us reason to conduct an in-depth investigation into the circumstances of your complaint. As of this date you have not come forth with such information; therefore, we have no alternative but to consider this case closed.

We regret that we have not been able to be of more assistance to you in this matter.

Sincerely yours,

s/Robert L. Maxwell
Assistant to the Chief,
Compliance Division
Office of Equal Employment
Opportunity and Compliance

16a

Ms. Venola Walton
539 West 148th St., No. 6
New York, New York 10031

Dear Ms. Walton:

Thank you for your letter of January 20, 1976, which included previously requested documents.

We will review each of the documents to see if any or all of them further substantiate your allegations that SBA discriminated against you.

At the conclusion of the review of these documents you will be notified as to whether or not your case will be reopened and an investigation will be launched.

Thank you for providing us the opportunity to assist you.

Sincerely,

s/Robert L. Maxwell
Robert L. Maxwell
Assistant to the Chief,
Compliance Division
Office of Equal Employment
Opportunity and Compliance

17a

539 West 148th Street Apt. No. 6
New York, New York 10031

February 24, 1976

Mr. Robert L. Maxwell
Assistant to the Chief Compliance Division
Office of Equal Employment
Opportunity and Compliance
1441 L. Street N.W.
Washington, D.C. 20416

Dear Mr. Maxwell:

I am writing in reply to your letter dated February 19, 1976. Thanks for acknowledging my letter and documents of January 20, 1976. However, I was disappointed; at this late date, you had not reviewed the documents so as to know whether they warrant reopening my case.

I hope you will review the documents and make your decision soon. I had hoped that you had already begun investigation.

Please let me hear from you soon regarding this matter. Thanking you in advance.

Very truly yours,

Venola Walton

Mr. Robert L. Maxwell
 Assistant to Chief Compliance Division
 Office of Equal Employment Opportunity
 and Compliance
 1441 L. Street, N.W.
 Washington, D.C. 20416

Dear Mr. Maxwell:

I am writing in reference to your letter dated the 16th day of December, 1975, wherein you stated that you had closed my case because I did not provide you with specific information which might give you reason to conduct an in-depth investigation into the circumstances of my complaint.

I would like to call your attention to my letters to your office dated the 15th day of October, 1975 and the 11th day of November, 1975, in which I requested an appointment, to present my proof to you in person. I also informed you that your report contained many false statements which you said were based on information from my file. I felt that I should have seen that information before presenting proof of the same.

Through the aid of the New York Civil Liberties Union, who contacted your office, it was made possible for me to obtain an appointment for January 6, 1976, with Mr. Mauch, who gave me copies of certain letters and papers that I requested from my file.

Referring to Mr. Melvin Walker's letter, in which he stated that I was in violation of my loan agreement because I had not sent the requested financial statement. I

am enclosing a copy of a letter, No. RSL-134,680-NY-P, from your district office, dated the 29th day of December, 1964, in which information was given regarding the payment of my loan.

The letter Mr. Gordon requested from my jobber, of which a copy was attached to my complaint and mailed to your office on August 11, 1975. This letter stated very clearly that I was in need of finances to improve my present operation, to be able to do more and better business. I realized the need to improve my business and certainly, if my business had been financially sound, I would have had no need for a loan.

I filed for a certificate of incorporation and received the incorporation kit but did not receive the approved certificate. Attached herein is a copy of a letter which I mailed to the Secretary of State, Mr. John P. Lomenzo, inquiring into same. I am also attaching a copy of his reply. The corporation was never formed. All of my business transactions were done under the name of Emery Grant Fashions. I have in my possession the incorporation kit, which may be examined at any time you desire.

The attached cancelled checks and letters serve as proof that I had not transferred any assets or liabilities, nor did I do business under that name.

I was not delinquent in my payments to the Small Business Administration, for one month, when a notice supposedly was sent to me on April 2, 1965. Attached hereto are cancelled checks reflecting payment for February, March, April and May.

At the time I was given the information from my files on January 6, 1976. I requested a copy of the Small Business Administration form No. 641, which I supposedly had signed, requesting counseling from Score. I was told by Mr. Mauch, that said form was not in my file. Mr. Shenker from Score reported on my business that I was in difficulty and that Union Manufacturers had cancelled

contracts with me because my shop was non-union. I am enclosing copies of my report to the Health, Welfare and Severence Fund, Joint Board, Dress and Waistmakers Union as proof of being Unionized.

I have furnished you with the necessary information which will enable you to re-open my case and proceed with the investigation of my complaint; and will allow you to make a just judgment.

It is my sincere hope that you will realize the wrong that has been done to me and will endeavor to rectify same.

Thanking you in advance for your anticipated cooperation and prompt attention in this matter, I remain,

Very truly yours,

Venola Walton (Ms.)

Ms. Venola Walton
539 West 148th Street Apt. No. 6
New York, New York 10031

Dear Ms. Walton:

We have reviewed the documents that you sent to us in your letter of January 20, 1976. Unfortunately, we fail to see how any of them lend further substantiation to your allegations of discrimination against you by the New York District Office of the Small Business Administration.

We ask that you please inform us as to how each of the documents specifically justify our launching an investigation of the New York Office on the grounds of discrimination.

We await your earnest reply.

Sincerely yours,

s/Robert L. Maxwell
Robert L. Maxwell
Assistant to the Chief,
Compliance Division
Office of Equal Employment
Opportunity and Compliance

APPENDIX 2**MEMORANDUM DECISION OF DISTRICT COURT**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. Civ. 3208 (JMC)

VENOLA WALTON,

Plaintiff,

-against-

THE SMALL BUSINESS ADMINISTRATION,

Defendant.

CANNELLA, D.J.:

Motion for summary judgment, Fed. R. Civ. P. 56(b), is granted as to the first claim in the complaint. Motion to dismiss for lack of subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1), is granted as to the second claim. The complaint is dismissed.

Plaintiff Venola Walton, a black woman, brought this suit against the Small Business Administration ("SBA") claiming that the agency's wrongful refusal to loan her money in 1965 and 1975 caused the failure of her dressmaking business.¹ Specifically, the complaint alleges

1. In November 1964 plaintiff was granted an SBA loan in the amount of \$6,000. In November 1965 plaintiff defaulted in her loan payments, and the Internal Revenue Service closed plaintiff's business for non-payment of federal taxes. Plaintiff contests the adequacy of the \$6,000 SBA loan and the agency's failure to lend her additional monies when she applied for them.

that such loans were denied plaintiff on the basis of her sex and race and that the defendant placed false documents in her SBA file. Defendant moves to dismiss the complaint for lack of subject matter jurisdiction and, alternatively, for summary judgment. As to the first claim, the Court finds, on the basis of the affidavits and supporting papers, that there are no material facts in issue and that defendant is entitled to judgment as a matter of law. As to the second allegation, the Court finds it is jurisdictionally defective because plaintiff failed to file an administrative claim. 28 U.S.C. §2675(a). The Court further finds that all claims arising from plaintiff's 1965 loan application are time-barred. 28 U.S.C. §2401(b).

Plaintiff's discrimination claim consists merely of the fact that she is a black woman and that, on two occasions, the SBA denied her a loan. Defendant's moving papers set out the circumstances under which these loan applications were denied, and it appears to the Court that the agency's decisions were substantially supported. See 5 U.S.C. §706. In response to the Government's papers, plaintiff has not advanced even one fact suggestive of discrimination. In such a case, the awarding of summary judgment is appropriate. *E.g.*, *Donnelly v. Guion*, 467 F.2d 290, 293 (2d Cir. 1972); *Appelgate v. Top Assocs., Inc.*, 425 F. 2d 92, 96 (2d Cir. 1970); see Fed. R. Civ. P. 56(e).

Plaintiff's second claim, that the SBA placed false and damaging documents in her file, must be dismissed for lack of subject matter jurisdiction due to plaintiff's failure to file an administrative claim. Fed. R. Civ. P. 12(b)(1); 28 U.S.C. §2675(a). Additionally, insofar as the claim is one for defamation, the doctrine of sovereign immunity would act as a bar to suit, 28 U.S.C. §2680 (h), and the Court finds the claim to be plainly frivolous.

Plaintiff, like so many other persons, tried to make a go of her own business, and failed. For a variety of

reasons, none of which involved plaintiff's race or sex, the SBA decided in its discretion that its funds should not be used to help fund her enterprise. In the absence of a showing that the SBA's decision rested on improper criteria, its decision cannot be disturbed.

For the above reasons, defendant's motions are granted and the complaint is dismissed.

The foregoing constitute the findings of fact and conclusions of law of the Court pursuant to Fed. R. Civ. P. 52(a).

SO ORDERED.

s/John M. Cannella
JOHN M. CANNELLA
U.S.D.J.

Dated: New York, New York
January 17, 1978

APPENDIX 3

UNITED STATES DISTRICT COURT JUDGMENT DATED JANUARY 23, 1978

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

78 Civil 3208 (JMC)

VENOLA WALTON,

Plaintiff,

-against-

THE SMALL BUSINESS ADMINISTRATION,
Defendant.

Defendant having moved the Court for summary judgment, pursuant to Rule 56, and pursuant to Rule 12(b)(1), of the Federal Rules of Civil Procedure, and the said motions having come on to be heard before the Honorable John M. Cannella, United States District Judge, and the Court thereafter on January 17, 1978, having handed down its memorandum decision, constituting its findings of fact and conclusions of law, and the Court having granted defendant's motions, it is,

ORDERED, ADJUDGED and DECREED: that Defendant THE SMALL BUSINESS ADMINISTRATION have judgment against plaintiff VENOLA WALTON dismissing the complaint.

Dated: New York, N.Y.
January 23, 1978

s/Raymond F. Burghardt
Clerk

APPENDIX 4

**ORDER OF UNITED STATES COURT OF APPEALS
SECOND CIRCUIT, DATED JUNE 19, 1978**

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 19th day of June, one thousand nine hundred and seventy-eight.

Present:

HON. WILLIAM H. MULLIGAN
HON. JAMES L. OAKES,
HON. MURRAY I. GURFEIN,
Circuit Judges.

(SAME TITLE) 78-6017

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed on the opinion of Hon. John M. Cannella, District Judge, in 76 Civ. 3208 (Jan. 17, 1978).

s/William H. Mulligan
WILLIAM H. MULLIGAN

s/James L. Oakes
JAMES L. OAKES

s/Murray I. Gurfein
MURRAY I. GURFEIN

APPENDIX 5

**ORDER DATED AUGUST 9, 1978 DENYING PETITION
FOR REHEARING**

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-ninth day of August, one thousand nine hundred and seventy-eight.

(SAME TITLE) 78-6017

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by counsel for the appellant, Venola Walton, and no active judge or judge who was a member of the panel having requested that a vote be taken on said suggestion,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

s/Irving R. Kaufman
Chief Judge
IRVING R. KAUFMAN

28a

APPENDIX 6

LETTER FROM BELLE MAID DRESS CORP. DATED JULY 12, 1965 ASSURING SBA OF PLAINTIFF'S ABILITY AND COMPETENCE AND THAT THEY WOULD PROVIDE WORK

Small Business Administration
42 Broadway
New York, New York

Re: RSL

Dear Mr. Gordon:

Miss Venola Walton, doing business as Emygrant Fashions, 347 West 39th Street, New York, New York is severely limited in her contracting operation; additional machines (approx. 40), larger factory area, and other facilities are needed to modernize and improve her present operation.

Belle Maid Dress Corp. has given Miss Walton work for several months, and has found her to be quite competent and efficient to produce in proportion to the size of her shop.

Belle Maid Dress Corp., can and will provide work for Miss Walton, on a continuing basis, upon the condition of shop expansion to larger quarters.

Thank you.

Very truly yours,

BELLE MAID DRESS CORP.
s/I. Lerner, Pres.
I. Lerner

IL:ab

APPENDIX 7

CONTRACT FROM ANNE FOGARTY

Mr. Bob Smith

Anne Fogarty Inc., 550 Seventh Avenue, New York, N.Y., 10018, telephone 4-9115

ACCT. #

SHIP TO Venola Walton DATE

ADDRESS 10 Emy Grant Fashions WHERE

CITY STATE NUMBER

TERMS: 1-10 E.O.M.

DEBT

ITEM NO.	QUAN.	DESCRIPTION	4	6	8	10	12	14	16	PRICE
		100% S.B.A.								

*Call wants to
see me & meet with you*

CREDIT BILL

103-1987

NO. 2466

New York Oct 5 1965

SHIP TO

347 W. 39th St. N.Y.C.

FROM INVOICE OR

160	<i>Singer</i>
160	<i>My garment ext</i>
160	<i>Venola Walton</i>

103-1987

11/2

REMITTANCE STATEMENT

Miss, 500 Avenue A, New York, N.Y. 10018
Telephone 4-8113

Oct 27 1965

No Long Grace Period

10/7/65

RECEIVED FROM Emily Grant Fashions

STOCK NO.	ITEM NO.	QUANTITY	UNIT PRICE
475.1	160	15	2444
	160	1	141.00

2

<u>AMOUNT TO REMIT</u>	
<u>P.T.</u>	<u>CASE NO. D 3458</u>

30a

31a

APPENDIX 7-A

**LETTER FROM M.J. FENTON (LANDLORD) DATED
OCTOBER 20, 1965 TO SBA (NYC) EXTENDING
TIME TO PROCESS LOAN**

Small Business Development & Opportunities Corp.
361 West 125th Street
New York, N.Y. 10027

Attention: Mr. Charles H. Hanley

Re: 12th Floor Front West
347-53 West 39th Street
New York, N.Y.

Dear Mr. Hanley:

This is to advise you concerning our pending Summary Proceedings against Miss Venola Walton, tenant of the captioned premises, for non-payment of September and October 1965 rent and other incidental charges aggregating \$454.00, that we will withhold any further action with respect to same until December 15, 1965.

Yours very truly,

ADAMS & CO. REAL ESTATE, INC.
M.J. Fenton
Vice President

MJF:es

APPENDIX 8

**FALSE STATEMENTS PLACED IN PLAINTIFF'S
SBA'S FILES**

In reply refer to: LAS:LG

Venola Walton d/b/a
Emy-Grant Fashions
347 West 39th Street
New York, New York

Re: RSL-134, 680-NY(P)

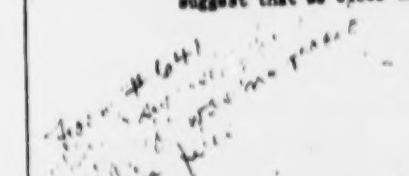
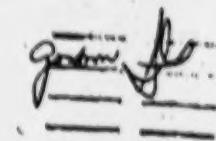
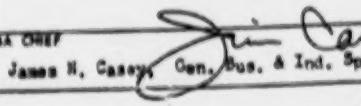
Dear Madam:

You are hereby notified that the delinquent monthly installment of \$99.00, due March 12 1965, must be paid immediately and all future installments must be forwarded to reach this office on or before the due date.

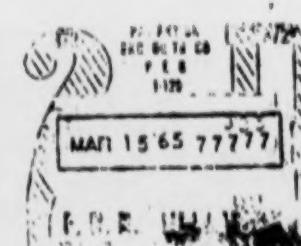
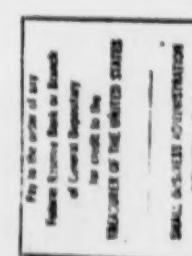
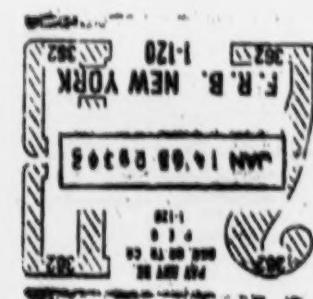
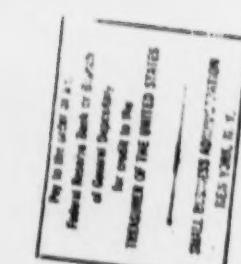
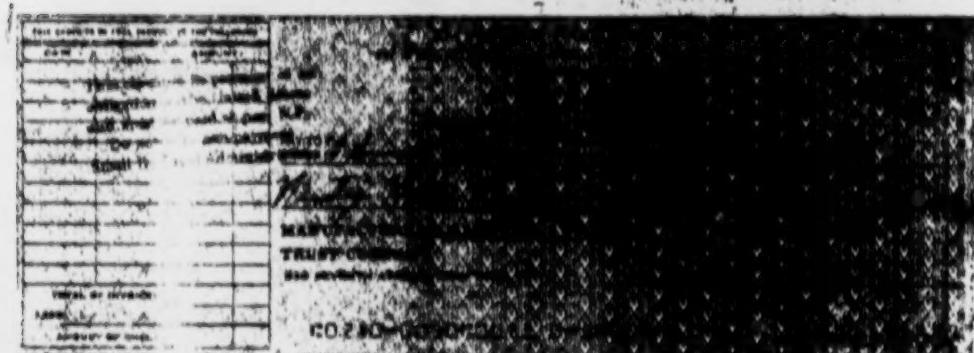
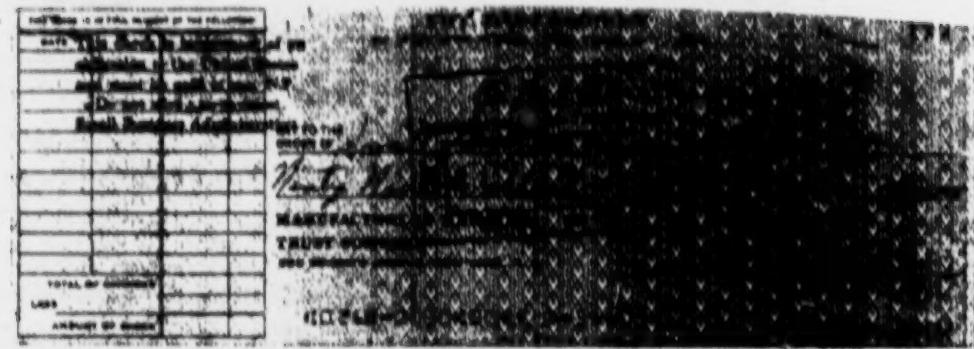
Very truly yours,

Charles H. Kriger
Regional Director
By s/J.R. Glassford
J. R. Glassford, Chief
Loan Administration Section
Financial Assistance Division

AHS:bk

VOLUNTEER ADVISOR PROGRAM EVALUATION REPORT NO. 3	
Instructions: (To be completed by Leader/Counselor and the MA Chief to record evaluation of case accomplishments 90 days after initial trip to place of business.)	
COUNSELOR (S)	REGION
Morris Shanker	New York
MA CHIEF	
BUSINESS COUNSELED	
COMPANY	EMY GRANT FASHIONS
INDIVIDUAL (S)	Venola Walton
ADDRESS	347 West 39th Street, New York, New York
<p>I visited subject at her factory and discovered that she was in difficulties with the manufacturers having withdrawn their contracts to her on account of the union. Therefore, my conclusion was that she really needs to straighten herself out with the union and the manufacturers.</p> <p>Since I am unable to give her any further assistance I suggest that we close this file.</p>  	
LEADER/COUNSELOR NAME	DATE
Morris Shanker	October 28, 1965
VOLUNTEER ADVISOR AUDIT REPORT	
(To be completed by the MA Chief to record his evaluation of accomplishments at the conclusion of case.)	
<p>We concur.</p> <p>Please close case.</p> 	
MA CHIEF	DATE
James N. Casey, Gen. Bus. & Ind. Spec. (SCORE)	October 29, 1965

APPENDIX 9
CHECKS REFLECTING PAYMENT TO SBA ON LOAN
NOTE FROM DEC. 7, 1964 THROUGH SEPT., 1965



THIS CHECK IS IN FULL PAYMENT OF THE FOLLOWING:

DATE	AMOUNT
Deposited in the United States and will be paid in New York N.Y.	\$100.00
Do not wire	
Small Business Administration	
TOTAL OF RECEIPT	
LESS	
AMOUNT OF OVER	



THIS CHECK IS IN FULL PAYMENT OF THE FOLLOWING:

DATE	AMOUNT
Deposited in the United States and will be paid in New York N.Y.	\$100.00
Do not wire	
Small Business Administration	
TOTAL OF RECEIPT	
LESS	
AMOUNT OF OVER	



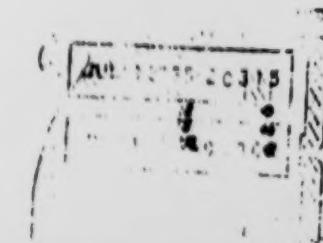
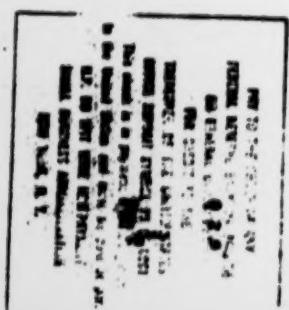
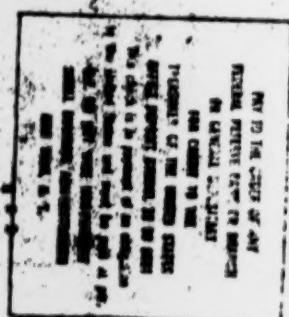
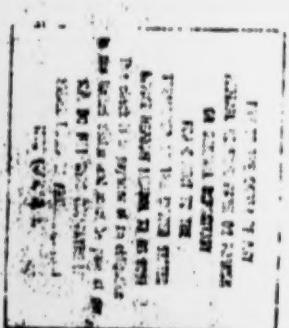
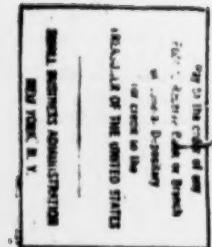
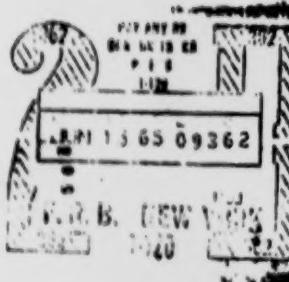
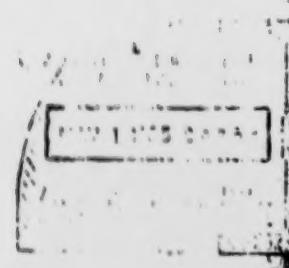
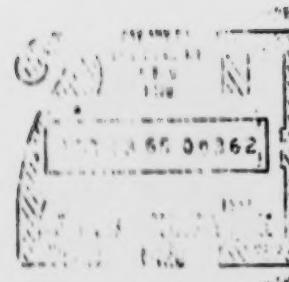
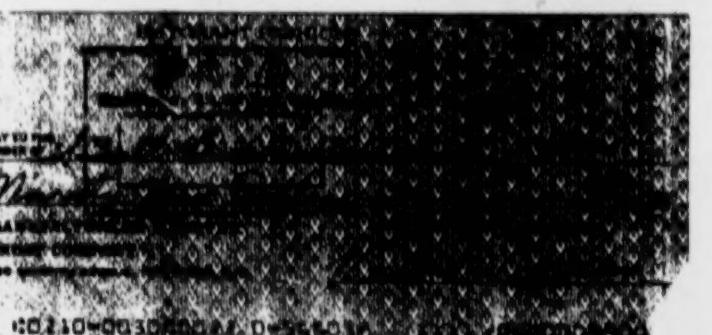
THIS CHECK IS IN FULL PAYMENT OF THE FOLLOWING:

DATE	AMOUNT
Deposited in the United States and will be paid in New York N.Y.	\$100.00
Do not wire	
Small Business Administration	
TOTAL OF RECEIPT	
LESS	
AMOUNT OF OVER	

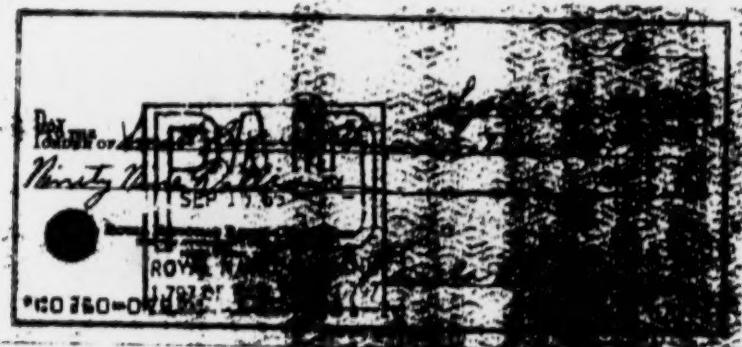
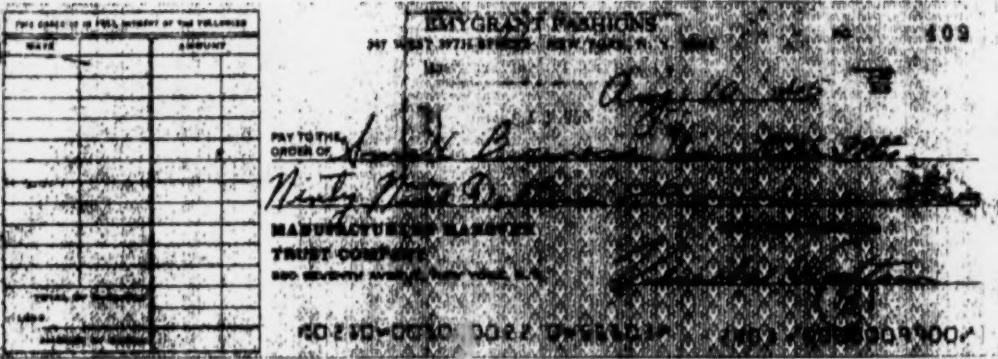


THIS CHECK IS IN FULL PAYMENT OF THE FOLLOWING:

DATE	AMOUNT
Deposited in the United States and will be paid in New York N.Y.	\$100.00
Do not wire	
Small Business Administration	
TOTAL OF RECEIPT	
LESS	
AMOUNT OF OVER	



38a



39a



HEALTH, WELFARE and SEVERANCE FUND

Joint Board Dress & Waistmakers' Union, ILGWU AFL-CIO
Contractor's Payroll Report for the Month of March 1965

HEALTH, WELFARE and SEVERANCE FUND

Joint Board Dress & Waistmakers' Union, ILGWU AFL-CIO
Contractor's Payroll Report for the Month of April 1965

	OWNER'S NAME	ADDRESS	PROPERTY NUMBER	PINCH PARKED	DISPENSATION	CHARGE	CREDIT
1	Belle Maria Deas Gao	101 7th Ave 4-91	17046				
2							
3							
4							
5							

IMPORTANT: Contractors working for HealthCare Pros or Prime Nursing Union Agreements without Health and Welfare provisions are fully responsible for the payment of PRIME rates for all services provided by their employees. Contractors are also responsible for the payment of PRIME rates for all services provided by their employees. Contractors are also responsible for the payment of PRIME rates for all services provided by their employees.

HEALTH, WEALFARE and SEVERANCE FUND

JOINT BOARD DRESS & WAISTMAKERS' UNION PAYROLL FUND
Joint Board Dress & Waistmakers' Union, ILGWU, AFL-CIO
Contractor's Payroll Report for the Month of May 1965

Scallop dredges 7/8
any chart Fathometer
300' w. depth sounder
area from N. N.Y.

IMPORTANT: Contractors working for Non-Union firms or firms having Union Agreements without Health and Welfare provisions are fully responsible for the payment of 10% of their payroll for such work or the equivalent rate as provided from liability in the Health and Welfare Fund. Please use the source below to compute amount due for non-work and work done with the report.

**JOINT BOARD OF DIRECTORS OF
HEALTH, WELFARE AND REINFORCEMENT FUND**
Mail not later than by the 10th of the following month to:
JOINT BOARD OF HEALTH AND WELFARE FUND
P.O. Box 1000, Bronx, New York 10451.

APPENDIX 10

REFERENCE LETTERS ESTABLISHING PLAINTIFF'S QUALIFICATIONS, AND BUSINESS REFERENCES

**LETTER FROM COLUMBIA DANCE FROCKS
1385 BROADWAY, NEW YORK, N.Y.**

To Whom It May Concern:

This letter will verify that Venola Walton, 413 W. 148th St., N.Y.C., was associated with this firm in the production of evening gowns for a period in the past. As a contractor, her work was satisfactory and our business relationship was excellent.

Were she to engage in such enterprise again, we would consider her as a possible contractor for our gowns.

Marcus Fina

**LETTER FROM JOY TIME
1385 BROADWAY, NEW YORK, N.Y.
DATED JULY 29, 1970**

Re: Miss Venola Walton

To whom it may concern:

We have used the design and production services of Miss Venola Walton on numerous past occasions and have always found them to be of a very high quality.

We would look with favour to the future use of these same services if they become available to us and are of the same high quality as in the past.

JOY TIME INC.
s/Bernard L. Shapiro
Bernard L. Shapiro
pres.

**LETTER FROM BELLE MADE DRESS CORP.
501 SEVENTH AVENUE, NEW YORK, N.Y.
DATED AUGUST 8, 1970**

To Whom It May Concern:

This will verify that Venola Walton worked for us as a Contractor. She is highly qualified in all areas of production. The quality of work was excellent.

If her services would become available again and were of the same high quality, we would consider her as a possible contractor for our work in the event we needed additional production.

Very truly yours,
NORMAN S. LERNER
s/Norman S Lerner
V.P.

APPENDIX 11

**SUIT FILED BY PLAINTIFF ON JULY 20, 1976
IN UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

(SAME TITLE)

1. I am filing in this Court because I am suing a Federal Agency, and this is a Federal Court.
2. I wish to sue the Small Business Administration, 26 Federal Plaza, New York, 10007.
3. My name is Venola Walton, 539 West 148th Street, apt. 6, New York, N.Y., 10031.
4. I am charging the Small Business Administration with:
 1. Discrimination; Denying me an Economic Opportunity Loan.

In June, 1964, I opened a dress factory under the name of Emigrant Fashions at 347 West 39th Street, New York City. I employed 17 persons and had a job for myself. In November, 1964, I was granted a \$6,000.00 loan from the Small Business Administration. Mr. Gordon, an S.B.A. Officer was assigned to visit my shop and aid me with problems. In June, 1965, I applied for an Economic Opportunity Loan. Mr. Gordon requested that I have my jobber write the Small Business Administration a letter to assure them that I would have sufficient income to repay the loan. I am enclosing a copy of that letter. I had complied with all of their requests, and met all requirements for the loan. My application was left lying there.

When I called about the application, I was told I had to get another contract. I secured another contract from Anne Fogarty, 550-7th Avenue, New York City, in October, 1965. When they were ready to send the work into my shop, the Small Business Administration would not let

me take the work. They said, the landlord will lock you out, and the Company would not be able to get the work to fill their orders. Then the Small Business Administration requested that I get a letter from my landlord, granting me time in order to take the work in, and for them to process my application. I am enclosing the contract from Anne Fogarty, and the letter from my landlord. I was then locked out by the Internal Revenue.

Much has transpired between 1975 in my effort to secure a loan. I am enclosing a letter dated April 8th, 1975 which accompanied my last application to the Small Business Administration. Also enclosed is their letter of denial, dated June 2nd, 1975.

2. I further charge the Small Business Administration with placing false information in my files, and for giving out false information which would discredit me.

On August 11th, 1975, I filed a complaint with Mr. Thomas S. Kleppe, Administrator, Small Business Administration, 1441 L Street, N.W., Washington, D.C., 20416. On October 10th, 1975, I received a report on their findings from Mr. Robert L. Maxwell. I informed them that their report contained many false statements, and requested a hearing so that all the facts could be presented. My request was ignored. It was made possible for me to go into the S.B.A. office and review certain documents from my file. The information Mr. Maxwell said he had based his findings on, was found in my file, at the S.B.A. office in New York City. I was given copies of that information. I mailed Mr. Maxwell documents of my proof that the information he had used in his findings was false. My case was closed, and they would not reopen it.

I am enclosing a copy of his findings, a copy of the documents from my file, copies of documents of my proof that false information was in my files.

5. I am asking the Court to order the Small Business

Administration to pay me \$500,000.00 for each year I have been:

1. Denied the opportunity to earn a living
2. Denied the opportunity to participate in our economic struggle, by making jobs for others
3. Denied the opportunity to participate in our free enterprise system
4. To pay for the obstruction of my livelihood.

s/Venold Walton

Filed July 20, 1976

APPENDIX 12**PLAINTIFF'S ONE YEAR PROJECTION OF INCOME AND EXPENSES**

My Resume, Reference letters, projections, etc., and the Small Business Administration's personal knowledge of my abilities and business performance that verify and tell of my experience and qualifications. The Defendant, SBA, through the fraudulent acts closed my business and engaged in a conspiracy to keep it closed.

Please take notice of my one year projections of income and expense: 1-2 and 3 (a revised one) and compare with the defendant's reasons for denying my loan application. In my one year projection, I have a Break Down, and I am sure if the defendants had bothered to read the entire projection, seeing an estimated sales for the year of \$315,000.00, it would not have struck him as being outlandish.

I shall go through the figures in projection number 1: I am working with a production figure os 210 dresses per week, priced at \$31.25 per dress.

Estimated Sales for the week	\$6,562.50
Estimated Sales for the Month	26,250.00
Estimated Sales for the year	315,000.00

Note: In order to produce these dresses, we must have material, lining, trimming, notions, so we have the cost of goods sold, \$12.75 per dress, producing 210 dresses per week, 10,060 dresses per year at a total cost of \$128,510.00

Estimated Sales for the year	315,000.00
Minus— Cost of goods sold	128,510.00
Leaves a gross profit of	186,490.00

Still to produce these same dresses we have an operating expense, such as payroll, rent, telephone, electricity, etc.

Approximately	\$127,703.20
Gross Profit	186,490.00
Operating expense	127,703.20
Income	58,786.80
Estimated Income Tax 22%	12,933.10
Leaving an estimated Net Profit of	45,853.70

The defendant must know when you say net profit, that means that all expenses has been paid, including the loan note and interest and owner's salary.

Projection #3, a revised one, at their request. And I have had many such changes to go through in complying with their demands But, even in the \$28,000.00 loan application in which the defendant made reference to the \$656.00 net profit for the year was not enough to pay an S.B.A. loan note and interest, salaries and all expenses had been included in: Gross profits and operating expenses. The \$656.00 was indeed profit.

I suddenly realized that the S.B.A.'s intentions were to force me into poverty, a hopeless state of existance. The harder I tried, the more they oppressed. I had to do something. For the defendants, I could never know enough or qualify enough to obtain a loan from the defendants, the Small Business Administration in their prejudices and race hatred has spoken out loudly, and demonstrated greatly against me.

In the Government's Memorandum of Laws "arguments," the defendant

APPENDIX 13
NOTICE OF APPEAL

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

VENOLA WALTON,

Plaintiff-Appellant,

-against-

THE SMALL BUSINESS ADMINISTRATION

Defendant-Appellee.

**NOTICE OF APPEAL TO
THE SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C.**

Notice is hereby given that Venola Walton, Plaintiff-Appellant, Pro Se, above named, hereby appeals to the Supreme Court of the United States from the order of Hon. Mulligan, Oakes, and Gurfein, (Circuit Judges) Judgment affirmed on the opinion of Hon. John M. Canella, U.S. District Court Judge, in 76 Civ. 3208 (January 17, 1978) on June 19, 1978.

I am also appealing on the original complaint, document, and records filed in the U.S. District Court 76-Civ. 3208 (JMC), appealing from the Memorandum Decision and order of Hon. John M. Canella, ordered, adjudged, and decreed. Judgment dismissing complaint, on January 23, 1978.

Hereto, a petition was filed for re-hearing, suggestion

a re-hearing in banc. Upon consideration thereof, the Hon. Irving R. Kaufman, Chief Judge, Second Circuit, ordered that said Petition be and it hereby is denied, on August 29, 1978.

STATUTES

Appeal Under Statute 28 U.S.C. §1252

An appeal lies to the Supreme Court from a decision of any Court of the United States, holding an Act of Congress Unconstitutional in a Civil suit to which the United States is a party.

And Supreme Court Practice Third Edition Sec. 2-5

Appeal Jurisdiction over Courts of Appeals where Federal Statute held unconstitutional.

**The Federal Civil Rights Acts
Civil Practice Chapter 7 (42 U.S.C. 1985)**

The purpose of the statute was to give a cause of action to individuals deprived of their Federal and Constitutional rights by conspiracies and discriminatory practices.

s/Venola Walton
Venola Walton, Pro Se
539 West 148th Street, Apt. 6
New York, N.Y. 10031
Tel. (212) 690-5198

Notice to:

Robert B. Fiske, Jr.
United States Attorney
for the Southern District of New York
Attorney for the Defendant

Supreme Court, U.S.

FILED

No. 78-809

JAN 5 1979

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States
OCTOBER TERM, 1978

VENOLA WALTON, APPELLANT

v.

SMALL BUSINESS ADMINISTRATION

*ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT*

MOTION TO DISMISS

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-809

VENOLA WALTON, APPELLANT

v.

SMALL BUSINESS ADMINISTRATION

*ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT*

MOTION TO DISMISS

1. Appellant invokes this Court's jurisdiction under 28 U.S.C. 1252. Section 1252 allows appeal to this Court only when a court of the United States has held an act of Congress unconstitutional. No such finding has been made in this case (see J.S. App. 22a-24a, 26a), and this Court accordingly does not have jurisdiction over the appeal.

2. Treating the papers as a petition for a writ of certiorari (see 28 U.S.C. 2103), the Court should deny the petition.

a. Appellant asserts (J.S. 15) that the Small Business Administration discriminated against her on the basis of her sex and race in denying loan applications and defamed her by including false and damaging documents in her file.

In November 1964, the SBA granted appellant a \$6,000 loan to operate a dressmaking business. In November 1965, she defaulted on the loan and the Internal Revenue Service closed her business for non-payment of taxes (J.S. App. 22a n.1). The SBA demanded that appellant satisfy the outstanding debt in June 1966 and again in November 1968, but without success (Exs. J, L).¹ The SBA ultimately determined that appellant was judgment proof, charged off her loan with an unpaid balance of \$5,244.65, and ceased collection efforts (Ex. M). Meanwhile, in 1965, appellant sought another SBA loan, which was denied (J.S. App. 22a). In 1975 she again applied for a loan, this time in the amount of \$40,000 (Ex. P). The loan was denied in January 1975 because appellant was an established credit risk, lacked management experience, and was unlikely to attain her predicted earnings (Ex. R). She resubmitted the application, but it was rejected for essentially the same reasons in April and June 1975 (Exs. V, Y).

Appellant then filed this suit in the United States District Court for the Southern District of New York, alleging race and sex discrimination and claiming that the SBA had defamed her. The district court dismissed the discrimination claim on the government's motion for summary judgment, finding that the agency's decisions "were substantially supported" and that appellant had not "advanced even one fact suggestive of discrimination" (J.S. App. 23a-24a). The court dismissed the defamation claim for lack of subject matter jurisdiction because appellant had not filed an administrative claim as required by the Federal Tort Claims Act, 28 U.S.C.

2675(a) (J.S. App. 23a).² The court also held that appellant's cause of action for defamation was excluded from the Tort Claims Act by 28 U.S.C. 2680(h) and was thus barred by sovereign immunity (*ibid.*).

The court of appeals affirmed on the opinion of the district court (J.S. App. 26a) and denied a petition for rehearing (*id.* at 27a).

b. Appellant's discrimination claim has been determined to be without factual basis by the district court and the court of appeals, and further review by this Court is not warranted. *Berenyi v. Immigration Director*, 385 U.S. 630, 635 (1967).

Appellant's defamation claim, on the other hand, is barred for at least three reasons: as the courts below correctly held, the United States has not waived sovereign immunity as to defamation claims, the claim concerning the 1965 application was not brought within the statute of limitations, and the claim is premature. Appellant has made no attempt to rebut any of these conclusions.³

²The district court also held that all claims stemming from appellant's 1965 loan application were barred by the two-year statute of limitations of the Tort Claims Act, 28 U.S.C. 2401(b) (J.S. App. 23a).

³Appellant asserts (J.S. 9, 10, 13, 15) that the government should not have been permitted to amend its answer to assert the statute of limitations. This amendment was appropriate because appellant's original complaint did not make clear that her tort claim related to the 1965 loan. The trial court acted within its broad discretion in granting leave to amend the answer (Fed. R. Civ. P. 15(a)), particularly since appellant showed no prejudice as a result of the amendment.

¹"Ex." refers to exhibits to the government's "Statement Pursuant to Rule 9(g)" filed in the district court.

It is therefore respectfully submitted that the petition
for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JANUARY 1979

FEB 7 1979

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1978

VENOLA WALTON, PLAINTIFF, APPELLANT

v.

SMALL BUSINESS ADMINISTRATION

*ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT*

OPPOSING BRIEF

VENOLA WALTON
Plaintiff - Appellant, Pro se
539 W. 148th Street
New York, N.Y. 10031

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-809

VENOLA WALTON, PLAINTIFF, APPELLANT

v.

SMALL BUSINESS ADMINISTRATION

ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT

OPPOSING BRIEF

The appellant opposes the appellee's motion to dismiss.

"Treating my jurisdictional statement as a petition for a writ of certiorari, the court should deny the petition."

The appellant asserts that this jurisdictional statement should not be treated as a petition for a writ of certiorari, but as a direct appeal.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28 U.S.C. 1252. Under this section, there are three prerequisites to the right to invoke the direct appeal provision of U.S.C. 1252:

1. The case must be a "civil action, suit, or pro-

ceeding." . . . and U.S.C. 1252 is not limited to actions governed by the Federal Rules of Civil Procedure.

2. The case must be one "to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party." . . .

3. The lower court judgment must be against the validity of an act of congress. If the decision is in favor of the constitutionality of the act, no direct appeal to the Supreme Court lies under U.S.C. 1252. But the decision adverse to constitutionality may relate only to the application of the statute to particular facts . . .

In my jurisdictional statement and appendices, I have provided this court with substantial evidence to prove that this case should be deemed important enough to warrant direct appeal to the Supreme Court.

The Defendant, stated in his motion on Page 2, second paragraph, that after my loan was denied in June, 1975, I filed this suit, in the United States District Court. That is incorrect. I first filed a complaint with Mr. Thomas S. Kleppe, Administrator, Small Business Administration, Washington, D.C.

See (J.S. App. 1a-21a) However, there is a mixup in these letters. Letters from (J. S. App. 16a-20a) are not in the proper sequence, and I beg the court to allow me to state their proper sequence, so the court may clearly understand the administrative agency's disposition of my complaint.

The letter at (J. S. App. 18a-20a) should be at (J. S. App. 16a-18a) and the letter at (J. S. App.

16a) should be a (J. S. App. 19a) and the letter at (J. S. App. 17a) should be at (J. S. App. 20a). And, of course, (J. S. App. 21a) is in its proper place.

These letters will prove to the court that it was after the S.B.A. Administrative Office findings, that this suit was filed in The United States District Court.

The Defendant asserts, that my original complaint did not make clear that my Tort claim related to the 1965 loan, thus making it appropriate to amend its answer to assert the statute of limitation. This can't possibly be true. My complaint, filed in all instances has been the same, perhaps more detailed in respondings.

The appellant, respectfully asks this court to review my original complaint, (J. S. App. 45a). I further ask this court to carefully review all of my jurisdictional statements and my appendices and review this case by direct Appeal.

Respectfully submitted,
Venola Walton, Appellant, Pro se

February 7th, 1979